

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	WT Docket No. 08-60
Request of Progeny LMS, LLC for a Four-)	
Year Extension of the Five-Year and Ten-)	File Nos. 0003422772-
Year Construction Requirement for its)	0003422999 and
Multilateration Location and Monitoring)	0003423004-0003423231
Services Economic Area Licenses)	

To: Office of the Secretary, FCC
Attention: Chief, Wireless Telecommunications Bureau

Comments¹

The undersigned parties described as “Petitioners” in the Erratum Petition to Deny attached hereto (the “Petition”), are herein called “Skybridge Foundation and Associates” (“SFA”).² Skybridge Foundation and Associates hereby submit their comments on Progeny 2’s 2nd Extension Request (herein “2nd Extension Request” means both the subject Applications and their associated extension waiver request).

Reference and Incorporation

SFA hereby references and incorporates its recent petition to deny filing against the 2nd Extension Request, a copy of which is attached hereto, as part of their comments in WT Docket No. 08-60. For the reasons given in that petition to deny, the 2nd Extension Request should be dismissed or denied.

I. Confidentially Filed Information

As SFA described in Section 13 of the Petition, the confidentially filed materials, Attachment A to the 2nd Extension Request, should be released. Progeny states in the 2nd Extension Request that its additional due diligence is included in this confidential Attachment A filing. Without this

¹ These comments are being filed via ECFS as specified in the FCC’s Public Notice, DA 08-1027, and also under the designated lead File No. 0003422772.

² The capitalized terms used herein have the same meaning as in the attached Erratum Petition to Deny.

information none of the Progeny claims in the 2nd Extension Request have factual support. Progeny appears to think that parties with interest and standing who seek to challenge or otherwise comment on their 2nd Extension Request know their asserted, unique situation and the alleged general market conditions that justify grant of the 2nd Extension Request; however, it is up to Progeny to provide the required evidence to the FCC, and also to disclose all material evidence publicly and not in a confidential attachment.³ This is because the 2nd Extension Request is not a minor modification application but a filing seeking major relief including waiver and extension of the current construction deadline and license renewal period imposed by rule (a number of rule waivers are involved). Parties with sufficient interest and standing may submit petitions to deny such applications under 47 U.S.C. Section 309 and also under related 47 CFR Section 1.939.⁴ The essence of a petition to deny is to assert *prima facie* evidence that the subject application grant would not be in the public interest, convenience and necessity. In order to exercise the right to submit a petition to deny a party must have access to the material evidence presented to the FCC by the applicant, which is not possible if that is confidentially filed and thus not made available to potential challengers. Similarly, to submit comments in response to the Public Notice, DA 08-1027, a party must have the noted material evidence relied upon by Progeny for grant of the extension request waiver.

Without release of the confidential information meaningful comments cannot be submitted.⁵ However, it was up to Progeny to make public all of the information upon which it

³ SFA requested information from Purdue University under a FOIA request under Indiana law and the office at Purdue University that handles FOIA requests refused to provide any information, citing an alleged exemption; however, they did not respond to SFA's response as to why the exemption did not apply to all of the information sought.

⁴ Challenges under these rules must be submitted within a short time frame insufficient for a party to seek confidential information and obtain it under a FOIA request, nor is a FOIA request a condition of petition rights under these rules.

⁵ SFA understand that certain information filed with the FCC may be kept confidential including under FOIA exemptions. However, SFA asserts here that no information which an applicant relies upon in an application subject to the above-noted petition to deny rights can be

bases its 2nd Extension Request. Clearly, Progeny understood that its 2nd Extension Request would be placed on public notice (apart from it being subject to petition to deny rights noted above). This is because Progeny 1's extension request and every other LMS-M extension request of construction deadlines was put on public notice and since LMS-M is subject to an ongoing Noticed of Proposed Rulemaking (NPRM) proceeding based solely on Progeny's similar facts and arguments as to what it employs in the subject 2nd Extension Request, which is a public proceeding. Extending or not extending the Progeny Licenses is clearly relevant to this drawn-out NPRM proceeding including since by Progeny's own logic it will fail to build any LMS-M licenses unless the rules are changed under conditions it states it requires for LMS-M construction and operation to be viable.

For all of the above reasons, Progeny had an understanding and obligation to disclose all information it relies upon in the 2nd Extension Request. Since it did not do so, the 2nd Extension Request should be summarily dismissed or denied.

II. The 2nd Extension Request is not Based on Current Rules, but on Progeny's Request and Assertion in the LMS-M NPRM WT Docket No. 06-49

As discussed in the Petition, the 2nd Extension Request is fatally defective and grant would be futile since Progeny doesn't assert that it seeks to meet, in the extended time period, the construction requirement under existing rules. Existing rules require only construction of defined LMS-M multilateration stations and service. Other uses of the spectrum are permitted, but not required. As the Public Notice states in summarizing the Progeny 2nd Extension Request, Progeny asserts participation in the NPRM to revise the construction requirement rules and other

kept confidential. For example, when Progeny 1 submitted an extension request of the construction deadline for its LMS-M licenses, it submitted alleged, confidential supporting materials it relied on for its arguments of due diligence. Warren Havens, who is among SFA, sought the confidential materials under a FOIA request. Eventually, after a long contested proceeding, by a compromise agreement all but a minor portion of that confidentially filed information was released to Mr. Havens without no confidentiality restriction; thus it became public. As a second attachment hereto, SFA is filing that released information.

rules, and that it is “funding...research on possible uses of M-LMS band.” Apparently, what Progeny is requesting is more time to attempt to change the rules, including the construction requirement and to allow other uses of LMS-M, and only in that case would its asserted due diligence research have any usefulness. An extension waiver request based upon rule changes and equipment and service under rules that may be changed is not valid. There is nothing in §§ 1.925 (regarding waivers) and 1.946 (regarding construction requirements) and precedents regarding these rules to provide for grant of an extension waiver request based upon asserted future construction and operation that would not meet existing construction and operation rule requirements. For the reasons in this section too, the 2nd Extension Request should be dismissed or denied, even if Progeny’s confidentially filed information is released.

Since Progeny’s 2nd Extension Request essentially asserts and relies upon facts and arguments Progeny made in the NPRM, SFA hereby references and incorporates all of their filings in that NPRM since they demonstrate the factual mistakes, unsupported claims and invalid arguments of Progeny’s attempt to change the current rules for the LMS-M radio service, which are designed for and proper for the LMS-M wide area ITS radio service.

III. The 2nd Extension Request Does not Address Adverse Effects to Other Parties

Progeny asserts in the 2nd Extension Request that since its spectrum is used by Part 15 devices that this should be considered as a reason to grant their 2nd Extension Request. Progeny cited no precedent supportive of that position. Instead, as shown above, Progeny’s request is actually not based upon eventually meeting current construction requirements but changing the construction requirement and also increasing the permitted uses in a way that such Part 15 devices, according to their proponents, may experience more interference than they would under current rules. Therefore, it was up to Progeny to address those Part 15 concerns in the 2nd Extension Request, unless Progeny believes those Part 15 interests have no possible legitimate

claims and arguments. However, Progeny did not take that position the LMS-M NPRM.⁶ An extension request must address the effects on other parties with legitimate interest. For the reasons given in this Section III, the Progeny 2nd Extension Request is defective.

IV. Other

As indicated above, SFA submitted other facts and arguments as to why the 2nd Extension Request is defective and should not be granted in the Petition. Those include clear evidence why the Progeny Licenses are invalid under law and that Progeny and its controlling interests lack character and fitness to hold the Licenses. Also, the Petition showed that Progeny failed to undertake required due diligence of any sort, not simply relevant due diligence under the current rules.

However, it seems reasonable for the Commission to grant a blanket extension to all LMS-M licenses it deems currently valid for a substantial number of years past the date of a decision on the LMS-M NPRM since without such a decision no licensee has certainty of the rules under which it must meet a construction requirement and under which it is permitted to provide additional services, including the technical parameters upon which equipment must be designed and manufactured and systems deployed.⁷

Conclusion

For the reasons given, the Progeny 2nd Extension Request should be dismissed or denied and the Licenses rescinded.

[Execution follows on next page]

⁶ Herein, SFA does not express a position in that regard. SFA's position is reflected in its filings in the LMS-M NPRM.

⁷ SFA has nevertheless continuously engaged, at high cost, with substantial progress, in design of equipment, systems and service under the current rules since they are appropriate for wide area ITS radio service, which is an entirely needed and viable radio service to the nation. It is the required multilateration that will supplement GPS in a manner required by ITS regional networks that is the essence of the LMS-M radio service under Commission rules and the extensive Commission rulemaking proceeding in the 1990s, which favorably commented on the ITS radio services to be developed in the future in the U.S.

Respectfully,

[\[Submitted Electronically. Signature on File\]](#)

Warren C. Havens, Individually and as President of
Skybridge Spectrum Foundation
Telesaurus Holdings GB LLC &
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June 4, 2008

Attachments: Erratum Petition to Deny
Progeny 1 Due Diligence Showing obtained as noted above

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request of Progeny LMS, LLC for a Four-)	File Nos. 0003423004-
Year Extension of the Five-Year and Ten-)	0003423231 and 0003422772-
Year Construction Requirement for its)	0003422999
Multilateration Location and Monitoring)	
Services Economic Area Licenses)	

To: Office of the Secretary, FCC
Attention: Chief, Wireless Telecommunications Bureau

Erratum*
Petition to Deny

1. Introduction. Warren Havens (“Havens”), Telesaurus Holdings GB LLC (“THL”), Skybridge Spectrum Foundation (“SSF”), as well as affiliates listed on the signature page hereto (the “Affiliates”) (together, the “Petitioners”) hereby submit this petition to deny (the “Petition”) the above-captioned applications (the “Applications”) and associated request for waiver of the Commission’s rules for an extension of four years of the current five-year and ten-year construction deadline (the “2nd Extension Request”) for the LMS-M¹ licenses (the “Licenses”) of Progeny LMS LLC (“Progeny 1” herein refers to the Progeny LMS LLC that existed prior to the grant of the transfer of control, File No. 0003250058; “Progeny 2” herein refers to the Progeny LMS LLC that existed after grant of the aforementioned transfer of control; and “Progeny”

* This is an erratum version of the original petition to deny. It makes no substantive changes. Additions are in red, underlined font and deletions are in red strikethrough font. In addition, this Erratum hereby explains that the original petition to deny was only filed under File No. 0003423004, rather than under all of the file numbers captioned above, and the exhibits were filed under this same File No. 0003423004, in addition to certain other ones but not all. It is sufficient to file under one file number since the subject extension request waiver is identical for all of them. In addition, for the same reason, the FCC’s Public Notice, DA 08-1027, referenced only one lead file number for convenience. The petition was filed timely as witnessed by review of ULS records for File No. 0003423004. This Erratum version will be filed only under File Nos. 0003423004 and 0003422772.

¹ “LMS-M” is used herein to refer to the Location and Monitoring Service licenses that are required to provide multilateration.

herein is used to mean one or the other or both of the previous defined terms as the context provides). For the reasons given herein, the Applications should be denied and the Licenses rescinded.

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2. Interest and Standing

THL and SSF have standing and interest to file because they hold LMS-M licenses in the vast majority of the land mass of the U.S. (approximately 80%) in which Progeny also holds the Licenses. THL and SSF can directly compete with Progeny. Affiliates also hold FCC licenses in virtually all of the areas where Progeny holds the Licenses in radio services that can compete with LMS-M.² In addition, Petitioners have interest since Progeny 1 and Progeny 2 have pursued drastic rule changes in LMS-M, which would divert LMS-M spectrum from its intended ITS purposes that is the business plan of THL and SSF and Affiliates. The rule changes Progeny has sought are contrary to the public interest and never had any credible foundation, but were based on false, bald assertions as described herein. Petitioners have legitimate interest in opposing Progeny's 2nd Extension Request since it has not acted as a credible, responsible LMS-M licensee, but has sought changes that would severely damage or destroy Petitioners' ITS wireless business plans and the ITS public benefits of LMS-M, an ITS radio service.

Petitioners also have interest and standing since Havens competed against Progeny in the first LMS-M auction in which Progeny 1 obtained licenses bid for by a different entity by misleading the FCC. That was unfair, unlawful competition and damaged Havens' lawful competition in that auction. Progeny 1 was not a qualified bidder and if its Licenses are rescinded as they should be and its participation in the auction rescinded, then Havens' bids on some of the Licenses awarded to Progeny 1 would be the highest qualified bids.

² Of Affiliates, AMTS Consortium LLC holds AMTS and 220-222 MHz licenses throughout the U.S., Intelligent Transportation & Monitoring Wireless LLC holds AMTS and MAS licenses throughout the U.S. and Telesaurus VPC LLC holds VPC, AMTS and 220-222 MHz licenses throughout the U.S. Affiliates' license holdings can be confirmed via the FCC's ULS. Affiliates' licenses can provide mobile data communication, AVL and other mobile location services. In fact, the U.S. Department of Transportation has done substantial investigation and testing of the use of 220-222 MHz for Intelligent Transportation Systems ("ITS") wireless, and clearly the adjacent AMTS spectrum can serve the same ITS purposes.

3. Background and Referenced and Incorporated FCC Materials, Fact and Arguments

Petitioners hereby reference and incorporate all of their facts and arguments in the filings, exhibits, attachments, supplements, etc. filed in the following two proceedings, which are still open and pending before the FCC, rather than reiterate and list them here again since it is more efficient (only the most current lead pleading has been listed for the petition proceeding listed first below; however, Petitioners, as stated, reference and incorporate all filings and associated filings made in the proceeding):

- (1) Application for Review of *Order on Reconsideration and Memorandum Opinion and Order*, DA 07-49, released January 31, 2007. Filed March 2, 2007 by Havens and THL regarding File Nos. 0002049041-240, 0002049270-297, 0001778449, 0001778450, 0001778451, 0001778452, 0001778454 (these file numbers refer to a previous request for extension of time to construct filed by Progeny 1 and a request for extension of time to construct by FCR, Inc., both LMS-M licensees). This matter is pending before the FCC. (the "ApRev Proceeding") (Petitioners are attaching here for convenience an "Attachment 3" that accompanied a "Reply to Opposition to Petition for Reconsideration Amended and Supplemented" that was filed in the ApRev Proceeding)
- (2) *Ex Parte Presentation* filed April 23, 2007 in WT Docket No. 06-49 by THL et al (Petitioners). 21 pages long. Among other items this ex parte discussed why Progeny 1 was not qualified to hold the Licenses (see e.g. item #6 in the ex parte presentation). ("Ex Parte 1")
- (3) *Ex Parte Presentation* filed May 7, 2007 in WT Docket No. 06-49 by THL et al (Petitioners). 83 pages long. This includes evidence that Progeny 1 did not even exist at the time of the first LMS-M auction and, even if it did, it failed to disclose all of its affiliates. ("Ex Parte 2")
- (4) *Ex Parte Presentation* filed May 29, 2007 in WT Docket No. 06-49 by THL et al (Petitioners). 4 pages long. Provides further arguments supporting #2 and #3 above. ("Ex Parte 3")
- (5) *Ex Parte Presentation* filed June 13, 2007 in WT Docket No. 06-49 by THL et al (Petitioners). 5 pages long. This ex parte in part shows that Progeny 1 lacks standing in the NPRM due to reasons given in Ex Partes 1-3 listed above. ("Ex Parte 4")

These Referenced Materials, with respect to the Progeny 1 extension request that was granted, cited applicable precedents including the Hilltop, and McCart cases(see respectively, In the Matter of Request for Extension of Time to Construct an Industrial/ Business Radio

Service Trunked Station Call Sign WPNZ964, Memorandum Opinion and Order, 18 FCC Rcd 22055 (WTB, CWD 2003) (Hilltop Order) and In the Matter of Request for Extension of Time to Construct a 900 MHz Specialized Mobile Radio Station and Request for Waiver of the Automatic License Cancellation of Call Sign KNNY348, Order, 19 FCC Rcd 2209 (WTB, MD 2004) (McCart Order)), and the grant of the Havens LMS-M extension request. In regard to the Commission's due diligence standard for grant of construction deadline extension requests—this is a core issue in this Petition to Deny and in a decision on the subject Progeny 2 Request-- the DC Circuit Court has summarized, in *Advanced Communications v. FCC*:³

Next, we reject appellants' claim that the Order should be vacated because the Commission "failed to supply a reasoned explanation for its abrupt departure from [the Commission's] stated goal of ensuring the prompt initiation of DBS service." Brief for Appellants at 43. While the timely initiation of such service is one of the Commission's primary goals, that has never been the sole criterion used to determine whether an extension should be granted to a DBS permittee. Rather, the Commission has considered "[t]he totality of the circumstances--those efforts made and those not made, the difficulties encountered and those overcome, the rights of all parties, and the ultimate goal of service to the public." USSB II, 7 FCC Rcd. at 7249, p 15 (quoting USSB I, 3 FCC Rcd at 6859) (emphasis added). Although enforcement of the due diligence rules may cause delays in the provision of a particular DBS system, the Commission's anti-warehousing policy relies on the enforcement of its due diligence obligations; otherwise, it could not ensure the prompt delivery of DBS service as a general matter. Taken to its logical conclusion, appellants' argument would deny the FCC the ability to revoke a DBS permit irrespective of the permittee's lack of due diligence if the revocation would delay the provision of a given DBS service. Such a result is patently untenable.

As shown below, Progeny clearly fails under this standard, and under the related standard articulated in the noted Hilltop, McCart, and Havens decisions, and other law cited in the Referenced Materials.

4. Progeny 1 Obtained the Licenses by Fraud, and Progeny 2 is Seeking to Launder and Perpetuate and Benefit from the Fraud, including by this Extension Request. The Licenses are Invalid Under Law, and Progeny 1 and Progeny 2 Lack Fitness and Character to Be FCC Licensees.

³ 84 F.3d 1452, 318 U.S. App. D.C. 78.

Petitioners demonstrated in the materials referenced above (the “Referenced Materials”) that Progeny I obtained the Licenses in clear violation of FCC auction rules. It was not a bidder in the auction, a fact ~~is it~~ specifically understood and hid from the Commission, and from its competitors including Havens of Petitioners. It had affiliates with attributable revenues in the billions of dollars that it also knew it also had to disclose in the subject auction applications (per the court documents cited in the above ~~reference materials~~ Referenced Materials), but again it chose to hide these from the Commission and its competitors. These matters, citing documents from Progeny 1 itself, including sworn statements by the controlling party in Progeny 1 in the court proceeding it commenced against the actual auction applicant and bidder controlling party, were also presented to Progeny 2 by the Referenced Materials.⁴ The Licenses are thus invalid under applicable law, and for the same reasons, the controlling parties in Progeny 1 and Progeny 2 lack candor, fitness, and character to hold the Licenses. Thus, the Extension should not be granted for these reasons alone.

5. Progeny Utterly Fails to Demonstrate Due Diligence of any Sort,
a Necessary Component for Grant of an Extension Request, which is a Waiver Request

In the Referenced Materials, Petitioners showed that Progeny 1 conducted no due diligence for its first construction deadline extension request. The subject ~~extension~~ 2nd Extension Request merely cites the grant of its first extension request as evidence that it did due diligence, but the Bureau clearly erred in summarily ~~found~~ finding, contrary to the facts, ~~the~~ that Progeny 1 engaged in and demonstrated any material due diligence. That error is being

⁴ Those documents, in turn, noted that Mr. Havens presented these essential facts in person to Mr. Raja Singh, of Progeny 2, prior to the assignment of the Licenses to Progeny 2, in a meeting he requested of Mr. Havens. Mr. Singh and others in the control group of Progeny 2 had every opportunity to study the relevant records, and thus, they knew or should know of the matters of this Section 4: the matters are clear in FCC Progeny 1 license records, and the cited Indiana Court case records are also, for the most part (including in sufficient detail for the argument made ~~aboe~~ above) publicly accessible.

challenged by Petitioners on appeal: it is not a final finding Progeny 2 can rely on here. Progeny 2, in this Request, did not demonstrate that Progeny 1 performed any due diligence prior to its first extension request.

Further, Progeny 2 does not, in the subject 2nd Extension Request do any better than Progeny 1 in its extension request in presenting facts, as opposed to bald assertions and dead-end references, to show that it has engaged in sufficient due diligence to meet the current rule requirements, which as noted below is to build and operate LMS-M multilateration radio service (all other constructions and service operations are optional under the rules). Merely asserting that Progeny in the past has been involved in LMS-M (which Progeny do not define, but appears to mean anything that it may want to do with the spectrum, and without disclosing it), or that Mr. Raj Singh Singh has some technology in mind, or some patents, does not explain anything.⁵

6. Progeny Fails to Even Define the Service and Equipment it
Suggests it is Seeking but Can't Get

Progeny did not do this, either in the ~~extension~~ 2nd Extension Request at issue or in the LMS-M NPRM or at any time.

7. (a) LMS-M is an ITS Radio Service; This Has Not Been Changed by
Progeny's Attempt in the NPRM, 06-49, and Progeny Utterly Fails to Show
it is Pursing ITS Radio Service and the Required Multilateration.

(b) The Extension Request Can Only Seek to Extend the Current Construction Deadline,
which is for Multilateration ITS Radio Service.

That LMS-M is an ITS radio service has been discussed at length in Petitioners' filings in the LMS-M NPRM docket. Progeny fails to show how it will meet the current rules construction

⁵ Petitioners Petitioners' technical consultants for its planned LMS-M radio service have many patents and access to many technologies, but that does not by itself demonstrate Petitioner's Petitioners' rights to such or its due diligence. In any case, Petitioners, in the LMS-M NPRM, 06-49, have disclosed in detail its business plan, technical developments, development partners, deployment plans, and other information to show its due diligence, as well as the viability of and great need for ITS wireless in the US based on LMS-M multilateration.

requirement, which is vehicle multilateration, or that it even has any intent to do so in the requested multi-year extension period.

8. Thus, Granting the Extension Request Would Be Futile

This is shown above and further below. In addition, Progeny did not demonstrate any basis for its suggestion that by the time of the requested extension (first and second ones) that it will have equipment and be able to construct and operate. Grant would be futile, since there is no plan disclosed to obtain particular equipment, to provide construction and operation either under the current rules, or under rules Progeny attempts to have amended for its undisclosed “flexible” radio service. If Progeny seeks equipment for the latter, it did not disclose that in any specificity, and if it did, it may be available now: It seeks what it ~~suggest~~ suggests are more viable (easier to implement or more profitable, it seems to mean) uses of LMS-M, but in such case (if the rules were changed as Progeny seeks), it may have equipment readily available. But in any case, it was up to Progeny to present any case ~~or~~ for the ~~extension~~ 2nd Extension Request with sufficient clarity and facts, and it did not do so.

9. Progeny Reverses Itself Again, for at Least the Fifth Time: It Lacks Credibility and Candor

10. Progeny Has Caused the Problem it Complains Of, and It Cannot Credibly Assert that it is Seeking Equipment When it Asserts that the Rules for Said Equipment and the Service to Be Provided are Not Viable.

11. Use of the Spectrum by Others, on Unlicensed Basis,
Does Not Warrant Grant to Progeny for More Time.

12. The 2nd Extension Request is Defective Procedurally, if the Assignment from
Progeny 1 to Progeny 2, which is Being Challenged on Appeal, is Reversed

13. Other

Release of Due Diligence Showing. Petitioners, as was done in the ApRev Proceeding, request that the FCC release a redacted copy of Progeny's due diligence showing that it filed with the 2nd Extension Request confidentially. It is in the public interest that this information be made public so that Petitioners and others can truthfully assess Progeny's alleged due diligence.

14. Conclusion

The Request Must Be Denied in the Public Interest for reasons given above.

Respectfully,

[\[Submitted Electronically. Signature on File\]](#)

Warren C. Havens, Individually and as President of
Telesaurus Holdings GB LLC
Skybridge Spectrum Foundation

&

Affiliates:
Intelligent Transportation & Monitoring Wireless LLC

AMTS Consortium LLC
Telesaurus VPC LLC

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June 2, 2008

Declaration

I, Warren C. Havens, hereby declare under penalty of perjury that the foregoing *Petition to Deny* was prepared pursuant to my direction and control and that all the factual statements and representations contained herein attributed to my knowledge, as the text or context makes clear, are true and correct.

[Submitted Electronically. Signature on File.]

Warren C. Havens

Date: June 2, 2008

Certificate of Service

I, Warren Havens, hereby certify that I have, on this 2nd day of June 2008, placed into the USPS mail system, unless otherwise noted, a copy of the foregoing *Petition to Deny*, with First-class postage prepaid affixed, to the following: ⁶

Progeny LMS, LLC
2058 Crossing Gate Way
Vienna, VA 22181
ATTN Carson Agnew

(Courtesy copy only, not for purposes of service, to: cagnew@progenylms.com)

Squire, Sanders & Dempsey L.L.P.
Bruce A Olcott , Esq
1201 Pennsylvania Avenue, NW, Suite 500
Washington, DC 20004
ATTN Bruce Olcott

(Courtesy copy only, not for purposes of service, to: bolcott@ssd.com)

[Filed electronically. Signature on file.]

Warren Havens

⁶ The mailed copies being placed into a USPS drop-box today may not be processed by the USPS until the next business day.

Certificate of Service for Erratum Petition to Deny

I, Warren Havens, hereby certify that I have, on this 4th day of June 2008, placed into the USPS mail system, unless otherwise noted, a copy of the foregoing *Erratum Petition to Deny*, with First-class postage prepaid affixed, to the following:⁷

Progeny LMS, LLC
2058 Crossing Gate Way
Vienna, VA 22181
ATTN Carson Agnew
(Courtesy copy only, not for purposes of service, to: cagnew@progenylms.com)

Squire, Sanders & Dempsey L.L.P.
Bruce A Olcott , Esq
1201 Pennsylvania Avenue, NW, Suite 500
Washington, DC 20004
ATTN Bruce Olcott
(Courtesy copy only, not for purposes of service, to: bolcott@ssd.com)

[Filed electronically. Signature on file.]

Warren Havens

⁷ The mailed copies being placed into a USPS drop-box today may not be processed by the USPS until the next business day.

Progeny’s statements: in (1) RM-10403, (2) Extension Request proceeding, (3) LMS-M NPRM. And (4): excerpts from the NPRM.

Assertion	Purpose	A. Progeny in RM-10403	B. Progeny in Extension Request	C. FCC in NPRM	D. Progeny in NPRM
Phase 1: Progeny tries years for NPRM, fails, and then submits extension request. Both assert same rationale. Progeny offers to tradeoff power and time for “flexibility” and asserts LMS-M under current rules—with required location, and no interconnect, etc.—is a certain failure. But that it, still, diligently tried to construct this failed service.					
1. LMS-M location private radio is obviated and will fail under current rules.		<p>At page iii of Petition for Rulemaking: “As Progeny demonstrates in its petition, however, the LMS licensees’ ability to develop and roll out effective LMS networks and services has been constrained by operational, content and aggregation restrictions that threaten the viability of the service. Because of these restrictions, Progeny and other licensees have been unable to secure sufficient capital or to engage manufacturers to develop equipment for LMS networks.”</p> <p>At page 1 of Petition for Rulemaking: As Progeny demonstrates herein, the current restrictions have prevented the licensees and manufacturers from developing services, and equipment required for such services, that could be offered in this spectrum.</p> <p>At page 6 of Petition for Rulemaking: “Notwithstanding the significant changes that have occurred, the 900 MHz LMS industry is saddled with service and technical limitations that have blocked the</p>	<p>At page 3: “Progeny’s original business plan for the use of its LMS spectrum involved tracking vehicles using multilateration techniques. Unfortunately, the widespread introduction of low-cost, embedded GPS receivers in the last several years has obviated the market demand for such multilateration systems.”</p> <p>At page 20: “As Progeny has previously told the Commission: “With E911 service now a mandate for cellular providers, and with GPS a globally available, free locational service, the narrow market for LMS, as earlier envisioned, does not exist.”</p>	<p>At Paragraph 11: When the Commission adopted its LMS rules in 1995, it expected that both M-LMS and non-multilateration LMS systems would play an integral role in the development and implementation of advanced radio transportation-related services. Non-multilateration systems have flourished since 1995 with the Commission licensing more than 2,000 sites to state and local governments, railroads, and other entities in recent years. However, only two M-LMS licensees, Teletrac and Ituran, operate M-LMS systems, and these exist in only a small number of markets.... Moreover, none of the six license holders that received their licenses through these auctions or by subsequent transfer or assignment are providing vehicle location services (or any other Part 90 M-LMS compliant service) with their spectrum.</p> <p>At Paragraph 19: This section seeks comment on whether the</p>	

		<p>licensees’ ability to provide service successfully, and which, unless removed, may doom the service. It is critical to modify several of the rule limitations described herein so that a truly nationwide LMS system can develop, which in turn will allow LMS to become an effective competitor to other CMRS systems that also provide location and monitoring services.”</p> <p>At Pages 15 and 16 of Petition for Rulemaking: “Another service provider opined that, given the onerous regulations that apply, Progeny would not find any company that would take the risk of developing LMS equipment. Other prospects concluded that the band would not be viable without “real time interconnectivity” to the public switched network. Further opinion was offered that GPS had “rendered the LMS band antiquated.”</p> <p>At page 16 of Petition for Rulemaking: “The market is unproven at best, and as discussed herein, the severe service restrictions and emergence of deep-pocketed competitors (CMRS carriers who are now required to incorporate location capabilities in their systems) make it unlikely that LMS will develop under the current limitations. Thus, Progeny does not anticipate any solution to the current dilemma caused by the absence of equipment for LMS, absent changes to the Commission’s Rules.”</p> <p>At page 20 of Petition for</p>		<p>Commission can promote more efficient use of the M-LMS Band by modifying or eliminating M-LMS restrictions on types of permissible communications (<i>e.g.</i>, vehicle location as primary operation) and interconnection, while protecting other licensed and federal applications and minimizing interference to unlicensed users.</p> <p>At Paragraph 20: As discussed above, the Commission adopted the M-LMS service and interconnection restrictions to promote a location-based service in 1995. We note, however, that more recent actions by the Commission have advanced the broader development of location-based services in other bands. Shortly after adoption of the M-LMS rules, the Commission adopted its initial E-911 rules, requiring all commercial mobile radio service (CMRS) carriers to meet standards for identifying the location of emergency callers and passing this information to the relevant public safety entities. In addition, there are several non-LMS service providers that offer location service to consumers and businesses, including satellite-based service providers Qualcomm (OmniTRACS® mobile communications service) and ORBCOMM (Little Low Earth Orbiting service). Under these</p>	
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		<p>Rulemaking: “In short, the LMS licensees are confronted with a very difficult task in attempting to implement a niche service, induce manufacturers to make equipment for LMS, and then compete against established CMRS operators that do not face the same technical and operational constraints.”</p> <p>At pages 29 and 30 of Petition for Rulemaking: “Thus, by dismantling the regulatory barriers to innovation in this band, the FCC could make possible not only the location and monitoring services it originally intended to authorize-and which licensees cannot offer economically in the band now...”</p> <p>At page 31 of Petition for Rulemaking: “If LMS is to fulfill its potential as a viable service, changes are needed now to allow time for equipment development and service rollout. Further delay will only dampen incentives to invest in LMS further, eroding any likelihood that the existing LMS licenses will be put to use for the legitimate and worthwhile purpose for which they were intended.”</p> <p>At Page v of Reply Comments: “Progeny believes that a rulemaking proceeding is the best, and only, way to reach a regulatory balance that will allow all users of the band to develop and deploy the services and equipment that the market demands. Therefore, Progeny urges the Commission to move expeditiously to open a</p>		<p>circumstances, we seek comment on whether there is any public interest benefit associated with continuing to limit M-LMS service flexibility to promote vehicle and other location-based services in the nation’s transportation infrastructure? Alternatively, should we maintain these restrictions to preserve M-LMS as essentially a location-based service, but provide licensees with some additional flexibility to offer their location-based services by, <i>e.g.</i>, eliminating spectrum aggregation constraints, testing conditions, or limits on non-vehicular offerings?</p> <p>Appendix at A.3: In the decade since M-LMS was established there has been very limited development of M-LMS under the existing rules. Specifically, when the Commission adopted its LMS rules in 1995, it expected that both M-LMS and non-multilateration LMS systems would play an integral role in the development and implementation of advanced radio transportation-related services. However, only two M-LMS licensees, Teletrac and Ituran, operate M-LMS systems, and these exist in only a small number of markets. Given these present circumstances, the Commission initiates this proceeding to determine whether new approaches could produce</p>	
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		<p>proceeding to modify its Part 90 rules governing multilateration LMS.”</p> <p>At Page 6 of Reply Comments: “Clear evidence from the marketplace indicates that further calibration is needed: there is not a single viable multilateration LMS system in operation, and no manufacturer has seen a sufficient opportunity to build equipment for this service. The Commission was correct in inaugurating the LMS service; in order to bring that vision to fruition, however, rule changes must be contemplated.”</p> <p>At Page 23 of Reply Comments: “If the Commission does not act, it will have the effect of perpetuating the current, imbalanced situation, in which there is no market or viable service utilizing the licensed LMS spectrum and in which Part 15 operators have in essence gained a “virtual license” to operate within a preserve set aside for their unlicensed spectrum “rights”.”</p> <p>At Page 24 of Reply Comments: “As the Commission itself has noted, its regulations were designed to set a finely crafted balance among the interests of all users of the band, licensed and unlicensed. If it was worth it to attempt to set this balance in the first place, and Progeny believes it was, it must be worth it now to follow through with rule modifications to re-calibrate that balance, which has clearly tilted in a way that now prevents multilateration licensees</p>		<p>more efficient and effective use of the 904-909.75 and 919.75-928 MHz spectrum band by LMS licensees.</p>	
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		<p>from building networks and deploying services.”</p> <p>Progeny LMS LLC, Oral Ex Parte Presentation, filed March 14, 2005, at Page 3: “<i>End the LMS service requirement:</i> The service restriction confines licensees to a narrow definition of LMS. E911 service is a mandate for cellular providers; GPS is globally available. - Thus, the narrow market for LMS, as originally envisioned, does not exist.”</p> <p>Progeny LMS LLC, Ex Parte Presentation, filed November 8, 2004 at Page 1: “Progeny remains steadfast in its positive outlook about the ability of LMS licensees to deliver critical public services, including much-needed homeland security applications, once the LMS rules are updated to reflect technology advances and market developments.”</p> <p>Progeny LMS LLC, Ex Parte Presentation, filed November 8, 2004 at Page 2: “Finally, the suggestion that Progeny’s petition is creating delays in the Commission’s consideration of buildout extension requests for other licensees in this band is unwarranted¹. Progeny supports buildout extension requests in this band. Its consistent point of view is that the LMS rules’ outdated use and technology limitations have impeded such buildout.”</p>			
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2. Equipment makers will not make equipment due to current rules.		<p>At page 1 of Petition for Rulemaking: As Progeny demonstrates herein, the current restrictions have prevented the licensees and manufacturers from developing services, and equipment required for such services, that could be offered in this spectrum.</p> <p>Footnote 1 of Petition for Rulemaking: "...Throughout the period of the late 1990s to the present, Progeny has worked with its employees, and several consultants and agents, as well as its investor group, to build a viable service. In fact, none of the many service providers and equipment suppliers approached by Progeny have followed through; their decisions not to support the LMS service have been based on the absence of any real equipment and on the built-in limitations on viable service provision imposed by licensing constraints."</p> <p>At Pages 15 and 16 of Petition for Rulemaking: "Progeny has diligently been seeking to implement service, but it has been unable to do so because of, <i>inter alia</i>, the absence of suitable equipment. As a result of the various limitations which currently apply to LMS licensees, manufacturers apparently have been unwilling to commit the resources necessary to design and develop equipment that will support the narrow offerings LMS licensees can provide under the current rules. Manufacturers do not perceive that there is a market, given</p>	<p>At pages 3 and 4: "Independent of Progeny's due diligence efforts within the parameters of the existing service rules, the company filed a Petition for Rulemaking at the FCC to overhaul outdated regulatory restrictions for this spectrum, as part of a larger effort to make M-LMS service deployment viable. Nonetheless, the Petition has remained unanswered at the FCC for nearly three years, creating further uncertainty among manufacturers about the return of any investment in time or capital to produce equipment for the band. Until these issues are resolved, this lack of closure concerning questions of necessary regulatory flexibility presents another impediment to convincing service providers or equipment makers about the usefulness of M-LMS spectrum."</p> <p>At page 23: "Progeny filed its Petition for Rulemaking on March 2, 2002, demonstrating at that time that the regulatory restrictions in the band have prevented licensees and manufacturers from developing viable services and equipment that would provide substantial public benefits."</p>		
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		<p>current regulatory restraints, to justify such significant investments.</p> <p>At Pages 15 and 16 of Petition for Rulemaking: “In an effort to move forward to provide service using its LMS licenses, Progeny has held discussions with a virtual “Who’s Who” of American manufacturers of telecommunications equipment. The response from several of the largest equipment suppliers, as well as from more entrepreneurial providers, has been consistent: the narrow “market” for a stand-alone location and monitoring service (particularly with the constraints imposed by the Commission) will not be sufficient to justify the time and expenses necessary to develop equipment for that market. The feedback has been uniform. For example, one equipment supplier said that both its regulatory team and its engineers had examined the possibility of manufacturing equipment and investing capital to develop the LMS spectrum. They concluded that, given the regulatory restrictions that govern the spectrum, the company could not justify any investment in LMS. Another service provider opined that, given the onerous regulations that apply, Progeny would not find any company that would take the risk of developing LMS equipment. Other prospects concluded that the band would not be viable without “real time interconnectivity” to the public switched network. Further opinion</p>			
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		<p>was offered that GPS had “rendered the LMS band antiquated.”</p> <p>At page 18 of Petition for Rulemaking: “Because location requirements are mandated for CMRS providers, all of the systems will be deploying location capabilities. In light of this obligation and the large base of CMRS customers, equipment manufacturers have been assured of a significant market, thus justifying research and development expenditures. As a result, equipment has been developed for location capabilities (both system-based and handset-based) for CMRS bands. In contrast, as noted above, Progeny has been unable to locate any manufacturer willing to develop equipment for LMS.”</p> <p>At Page 21 of Petition for Rulemaking: “As discussed above, however, Progeny’s efforts have been frustrated by the absence of equipment and capital, which in turn can be ascribed, at least in part, to the restrictive service rules for LMS. As a result, potentially valuable spectrum has lain fallow, and there is little likelihood that it will be put to productive use for these services (or others) unless there is a change in those rules.”</p> <p>At Page 22 of Petition for Rulemaking: “Thus, the public has already been deprived of the potential benefits from use of the LMS spectrum, and it will continue to suffer that loss until the spectrum is put into</p>			
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		use. That will not occur, however, unless and until the LMS rules are changed so that the licensees, the capital markets and the equipment manufacturers have sufficient incentives to invest in the development of these bands.”			
3. (Nevertheless) Progeny diligently tried to construct under current rules by seeking equipment (that had to include the required multilateration equipment).		<p>Footnote 1 of Petition for Rulemaking: “...Throughout the period of the late 1990s to the present, Progeny has worked with its employees, and several consultants and agents, as well as its investor group, to build a viable service. In fact, none of the many service providers and equipment suppliers approached by Progeny have followed through; their decisions not to support the LMS service have been based on the absence of any real equipment and on the built-in limitations on viable service provision imposed by licensing constraints.”</p> <p>At Pages 15 and 16 of Petition for Rulemaking: “Progeny has diligently been seeking to implement service, but it has been unable to do so because of, <i>inter alia</i>, the absence of suitable equipment. As a result of the various limitations which currently apply to LMS licensees, manufacturers apparently have been unwilling to commit the resources necessary to design and develop equipment that will support the narrow offerings LMS licensees can provide under the</p>	<p>At pages 3 and 4: “Independent of Progeny’s due diligence efforts within the parameters of the existing service rules, the company filed a Petition for Rulemaking at the FCC to overhaul outdated regulatory restrictions for this spectrum, as part of a larger effort to make M-LMS service deployment viable.”</p>		

		<p>current rules. Manufacturers do not perceive that there is a market, given current regulatory restraints, to justify such significant investments.”</p> <p>At Pages 15 and 16 of Petition for Rulemaking: “In an effort to move forward to provide service using its LMS licenses, Progeny has held discussions with a virtual “Who’s Who” of American manufacturers of telecommunications equipment.</p> <p>At Page 21 of Petition for Rulemaking: “The Commission envisioned LMS as fulfilling an important need for location and monitoring services that would aid the transportation industry and the economy in general. Progeny (and presumably the other licensees) shared this goal, and it has tried to implement a system that would deliver the promise of LMS. As discussed above, however, Progeny’s efforts have been frustrated by the absence of equipment and capital, which in turn can be ascribed, at least in part, to the restrictive service rules for LMS. As a result, potentially valuable spectrum has lain fallow, and there is little likelihood that it will be put to productive use for these services (or others) unless there is a change in those rules.”</p> <p>Progeny LMS LLC, <i>Ex Parte</i> Presentation, filed on March 11, 2005 at Pages 1 and 2: “While awaiting Commission action, Progeny filed a Request for Waiver last month for a limited extension of the</p>			
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4. Progeny will tradeoff transmit power and time, in exchange for use flexibility, including no location requirement and no private-radio (not-interconnected) limitation.		<p>At Pages 27 and 28 of Petition for Rulemaking: “Progeny thus urges the Commission to substitute technical constraints, as necessary, for the service limitations now incorporated in the LMS rules. For spread spectrum operations, Progeny believes that a limit on the number of simultaneous users or on total power will afford sufficient protection to the primary users, while also limiting the adverse effects on the “secondary” users. For non-spread spectrum operations, Progeny believes that a duty-cycle limit, along with the current technical constraints, will provide sufficient protection for the other current users of the 902-928</p>		<p>Appendix at A.5: The Commission also seeks comment on whether interference that might result from expanded service M-LMS offerings could be mitigated by adopting stricter power limits for M-LMS licensees, introducing frequency hopping, or altering digital modulation rules.</p> <p>At Paragraph 21: Specifically, we seek comment on the extent to which stricter power limits, discussed in Section III-B below, or other technical restrictions, could limit the potential for interference between more flexible licensed use and existing</p>	

		<p>MHz band.”</p> <p>At Page 12 of Reply Comments: “Interference mitigation techniques LMS systems can employ include using directional antennas for base station transmissions, power control algorithms and discontinuous transmissions. Utilizing directional antennas can provide up to 20 dB or more of interference protection to Part 15 devices that are not in the main beam of the antenna. Utilizing dynamic power control algorithms to maintain LMS transmissions at the minimum required power levels can reduce potential interference to Part 15 devices up to 15 dB or more. Discontinuous transmissions can gate off transmitters during even very brief moments when there is no information to send. Even brief lapses in transmissions provide a great interference benefit to other users of the band.”</p> <p>At Page 22 of Reply Comments: “In addition, LMS licensees could agree to limits on the amount of spectrum they employ, or to alterations in duty cycles for transmission. In rare circumstances, reasonable power limitations could be negotiated.”</p>		<p>unlicensed use of the M-LMS Band.</p> <p>At Paragraph 28: We therefore seek comment on the consequences of reducing the maximum permitted transmitter power in the three primary M-LMS band segments: 904.000-909.750 MHz, 919.750-921.750 MHz, and 921.750-927.250 MHz. We seek specific comment on whether reducing the maximum permitted transmitter power of M-LMS in these segments, from the current limit of 30 Watts ERP to a new lower limit of 6.1 Watts ERP (which equals 10 Watts EIRP), would result in an environment where M-LMS stations operate on far more comparable power levels with Part 15 devices, provided an appropriate minimum bandwidth or methodology is specified on how power would be measured for new flexible M-LMS operations. Under such a rule change, M-LMS licensees would be allowed to operate their stations with only 2.5 times as much power as Part 15 device users, rather than the 12.3 times now permitted under Commission rules.</p> <p>At Paragraph 29: Each of the three M-LMS block licenses has an associated 0.25 megahertz channel (located in the 927.25 to 928 MHz portion of the band), which is subject to a</p>	
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				<p>current 300 Watts ERP (which equals 492 Watts EIRP) power limit per transmitter. We seek comment on reducing these limits to a maximum 10 Watts ERP power limit for each channel to mitigate the potential for unreasonable interference to existing Part 15 devices.</p> <p>At Paragraph 30: For example, we seek comment on whether to adopt technical rules for M-LMS operations that are similar to the frequency hopping and digital modulation rules set forth in Section 15.247 of the Commission’s regulations.</p> <p>At Paragraph 32: Under such an adaptation to the M-LMS rules, we seek comment on whether the spectral power density limit of Section 15.247, adjusted for the power levels discussed above for M-LMS stations (<i>i.e.</i>, a 10 Watt EIRP limit for M-LMS stations, which represents a 4 dB increase over the existing 4 Watt EIRP limit for Part 15 devices), would satisfactorily eliminate unreasonable interference to Part 15 operations. Specifically, would a spectral power density limit of 12 dBm per 3 kHz be technically reasonable and</p>	
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				<p>appropriate? We also seek comment on a minimum bandwidth for digital modulation (including direct sequence spread spectrum). Would the 6 dB emission bandwidth of 500 kHz used in Section 15.247 also be technically reasonable and appropriate for M-LMS and permit Part 15 devices to continue to use the M-LMS Band without unreasonable interference? Section 15.247 also includes provisions regarding occupancy time, and separate power limits based on the number of hopping channels used for frequency hopping spread spectrum devices. If we were to adopt spread spectrum rules for M-LMS that are similar to those in Section 15.247, should M-LMS licensees be permitted to use frequency hopping spread spectrum modulation? If so, what power and other technical limits would be appropriate and enable users of Part 15 devices to continue to operate in the band without unreasonable interference?</p>	
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FCC accepts above { { { {	<p>A. Issues NPMR with Progeny tradeoff proposal & rationale. Released March 7, 2006.</p> <p>B. Grants Extension May 24, 2006</p> <p>-- A & B inextricable --</p>			<p>NPRM issued, inextricable with grant of Extension Request. To accept Progeny bald (and spurious) assertion of non-viable LMS-M in the Extension Request, and to grant it, virtually required issuance of NPRM.</p> <p>At Paragraph 18: The current M- LMS rules place significant restrictions on M-LMS operations that were designed in large measure to limit interference among the variety of users within this band. We inquire whether these restrictions might unnecessarily restrict the use of the band and impede more efficient use of spectrum.... A consequence of these restrictions, however, has been that M-LMS licensees may be unnecessarily prevented from providing other services, even as technical advances and market demands change what may be feasible within the interference parameters established for this band. Given the history of this band and our goal to provide rules that promote licensee flexibility while protecting other users, we seek comment on whether the existing restrictions may be impeding the development of more services of greater value to the public, as well as comment on the feasibility of changing certain rules to provide licensees additional flexibility.</p>	
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				At Paragraph 19: This section seeks comment on whether the Commission can promote more efficient use of the M-LMS Band by modifying or eliminating M-LMS restrictions on types of permissible communications (<i>e.g.</i> , vehicle location as primary operation) and interconnection, while protecting other licensed and federal applications and minimizing interference to unlicensed users.	
Phase 2: After licenses extended, Progeny reverses positions used to get the grant. It (1) now retracts the tradeoff proposal, (2) now asserts it is going to provide LMS-M location service (a secret, unidentified, “ELP”), (3) now will do PMRS public safety (even “Homeland Security”). These 3 DO NOT NEED “flexibility,” they are fully permitted under current rules.					
5. Progeny withdraw’s tradeoff used to get grant of Extension and NPRM.					Comments at pages iv and v: Progeny previously has demonstrated to the Commission that an LMS system operating at 30 Watts ERP (effective radiated power) would cause no more interference to Part 15 devices than would other Part 15 devices. Since submitting this assessment to the Commission four years ago, advancements in radio equipment point to a level of interference risk that is further diminished or even non-existent. Moreover, reducing the allowed output power from 30 Watts ERP to 6.1 Watts ERP would not reduce the risk of harmful interference. M-LMS systems

				<p>would be compelled to make up for this lower allowed output power by building more transmitters to cover the same geographic area. Thus, the lower output power would not reduce the potential interference risk to Part 15 devices and would increase network build-out and operational costs to a level that would continue to foreclose the deployment of viable systems in MLMS spectrum. In Progeny's view, the Commission should allow M-LMS systems using closed loop power control systems and sectorized antennas to operate above the 30 Watt ERP limit, commensurate with the interference reduction level facilitated by these technologies and in line with rules for other spectrum bands.</p> <p>See Comments at Section II. A., B., C., D., and E.</p> <p>Comments at Pages 23 and 24: Progeny firmly believes that the proposed reduction in output power for M-LMS systems will have no meaningful impact on the interference environment. Meanwhile, it will cause the cost of M-LMS systems to become uneconomical to deploy and operate, will hinder useful inter-operation among licensed and unlicensed users of the band, and,</p>
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					<p>in short, will deny public safety and commercial users the opportunity to reap maximum benefits from this spectrum.</p> <p>Comments at Page 30: Progeny submits that M-LMS systems should be allowed to operate above the allowed 30 Watt ERP output power level under special circumstances, using well-documented advanced engineering techniques. In particular, Progeny believes M-LMS licensees should be allowed an additional 5 dB in output power when using closed loop power control systems, and an additional variable allowance based on the use of sectorized antennas.</p> <p>See various parts of Progeny Comments, Reply Comments and Ex Parte Presentations in WT Docket No. 06-49.</p>
6. Clearly in technical ignorance, despite the preceding, Progeny suggests Power Spectral Density that would give up virtually all power.					<p>See Comments at Section II. D.</p> <p>See various parts of Progeny Comments, Reply Comments and Ex Parte Presentations in WT Docket No. 06-49.</p>

<p>7. Progeny withdraws assertion that LMS-M for location will fail.</p> <p>Progeny baldly alleges development a location service using LMS-M, “EPL.”</p>				<p>Comments at page ii: Progeny currently is developing an Enhanced Position Location (EPL) service that will provide valuable enhancements for the public safety and homeland security markets.</p> <p>Comments at pages 10 and 11: Proof that the Commission’s proposals in this proceeding are on the right track can be found in recent efforts by Progeny to develop a technical and business case for a system called “Enhanced Position Location” (EPL). This planned system will use technology, for which a patent application has been filed, to locate devices in areas where GPS service does not function adequately. Examples include providing service deep inside buildings or in subterranean areas, and at remote disaster scenes. This service is intended for public safety users and other providers of critical infrastructure, as well as by a broad range of customers in crisis situations. Progeny envisions that EPL technology will be embedded into mobile radios used by public safety officials, and could, in fact, be embedded into ordinary wireless devices. EPL will deliver significant improvements over current location systems, serving areas where location data and related information are urgently needed but currently unavailable</p>
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					<p>on a broadband basis. Moreover, this service is aligned with the original scope and intentions of the Commission in this band.</p> <p>See various parts of Progeny Comments, Reply Comments and Ex Parte Presentations in WT Docket No. 06-49.</p>
<p>8. Progeny withdraws assertion that LMS-M needs flexibility for interconnect (CMRS).</p> <p>Progeny baldly alleged it will serve public safety (PMRS).</p>					<p>Comments at page ii: Progeny currently is developing an Enhanced Position Location (EPL) service that will provide valuable enhancements for the public safety and homeland security markets.</p> <p>Comments at Page 2: The lifting of service restrictions and other outdated regulations will pave the way for Progeny and other M-LMS licensees to pioneer advanced, location-based services that the market demands, particularly to meet vital homeland security and public safety needs. See Comments at pages 10 and 11 re: EPL.</p> <p>Comments at page 11: Full service flexibility is needed and warranted to allow this and other, similar homeland security and public safety services to develop and reach their full market potential.</p> <p>Comments at page 44: If the right rules are in place, M-</p>

					<p>LMS licensees such as Progeny will be able to offer advanced, location-based services, such as Progeny’s planned EPL offering, which will serve the public interest and promote economic growth, public safety and spectral efficiency.</p> <p>See various parts of Progeny Comments, Reply Comments and Ex Parte Presentations in WT Docket No. 06-49.</p>
<p>9. Progeny new position</p> <p>LMS-M CAN be viable for location.</p> <p>LMS-M CAN be viable for private radio.</p>					<p>Progeny alleges it is developing “EPL” location equipment and service.</p> <p>Progeny alleges it will serve public safety, which is private radio.</p> <p>Comments at page ii: Progeny currently is developing an Enhanced Position Location (EPL) service that will provide valuable enhancements for the public safety and homeland security markets.</p> <p>Comments at Page 2:</p> <p>The lifting of service restrictions and other outdated regulations will pave the way for Progeny and other M-LMS licensees to pioneer advanced, location-based services that the market demands, particularly to meet vital homeland security and public safety needs.</p> <p>See Comments at pages 10 and 11 re: EPL.</p>

					<p>Comments at page 11: Full service flexibility is needed and warranted to allow this and other, similar homeland security and public safety services to develop and reach their full market potential.</p> <p>Comments at page 44: If the right rules are in place, M-LMS licensees such as Progeny will be able to offer advanced, location-based services, such as Progeny’s planned EPL offering, which will serve the public interest and promote economic growth, public safety and spectral efficiency.</p> <p>See various parts of Progeny Comments, Reply Comments and Ex Parte Presentations in WT Docket No. 06-49.</p>
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Attachment 2:

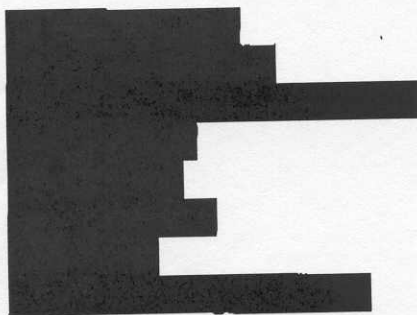
**Attachment B
Confidential Filing
Due Diligence Activities
Progeny LMS, LLC**

The information contained herein provides further details concerning Progeny's due diligence efforts to deploy service on M-LMS spectrum, despite continued difficulties in obtaining equipment that would meet the relevant five-year build-out deadline on these licenses. In a separate letter, Progeny requests that the material contained in this Attachment, submitted in conjunction with this limited Request for Waiver to extend the construction timeline, be withheld from public inspection. This request is made pursuant to Sections 0.457(d) and 0.459 of the FCC's rules¹. The material contains privileged information concerning pending efforts to reach partnership agreements or past contacts with equipment vendors, which could have a bearing on future agreements.² The confidential treatment of this document allows for the provision of information about Progeny's business development approach and/or research concerning available equipment.

1. Communications with Service Providers, Equipment Makers

Progeny has held communications with major end users, service providers and equipment manufacturers to further its goal of deploying services as rapidly as possible using the licenses in this band. The potential customers represent critical infrastructure providers and end users who have an immediate interest in the security and tracking applications that would be enabled by deployment of viable M-LMS services.

To this end, Progeny has utilized the services of consultants and technical experts to facilitate partnership and development opportunities with these entities. Progeny entered into consulting agreements to explore development opportunities for services and equipment as early as August 2000, just weeks after the licenses were granted by the FCC. In addition, to direct discussions by Progeny management, the services of the following consultants have been or are retained:



¹ 47 C.F.R. Section 0.457(d) and 0.459.

² To assist the Commission in its consideration of the instant request, Progeny has attached a copy of the referenced Request for Waiver.

Progeny and the consultants it has retained have contacted the following service providers and/or end users concerning development opportunities for its M-LMS licenses:

[REDACTED]

[REDACTED]

Progeny and the consultants it has retained have contacted the following equipment vendors and developers concerning the required equipment to commence construction for the M-LMS licenses:

[REDACTED]

Other firms and individuals with whom Progeny and its consultants have explored development opportunities include:

[REDACTED]

2. Market Research/Survey of Equipment Makers

Most recently, Freedom Technologies, Inc., consultants to Progeny, conducted research to refresh the record concerning the scope of equipment that may be available.

Progeny undertook this step out of an abundance of caution to again substantiate that which the Commission stated in the *Havens Order*, which is that "Havens' situation is unique in that no equipment is available, making it impossible for construction to occur at this time."³

As demonstrated herein, Progeny has continued to solicit interest and explore opportunities with equipment vendors and other partners to commence providing service on the M-LMS licenses. The survey of vendors was conducted to ensure that those discussions had not overlooked potential equipment that could be deployed on the M-LMS licenses. The survey indicated that there has been no change since 2000 regarding the lack of suitable equipment for the band.

Progeny has informed the Commission in numerous filings of its attempts to obtain equipment for the band. In the 2002 Petition for Rulemaking that Progeny filed to seek regulatory flexibility for the band, the company described a list of equipment vendors contacted for stand-alone location and monitoring service equipment. The feedback indicated that in several cases, engineers and regulatory experts at vendors had examined the possibility of manufacturing equipment for LMS spectrum but had concluded that given the regulatory restrictions in the band, the investment would not be justified.⁴ In some cases, vendors suggested that the proliferation of GPS applications had overtaken the usefulness of the LMS band based on current regulations.

Alcatel: A review of Alcatel's product listings did not reveal equipment offerings that would be suitable for building out M-LMS networks. By comparison, the company has delivered wireless LMDS solutions for 900 MHz GSM networks in certain markets.

Alvarion: Alvarion does not market equipment that could be operated in M-LMS spectrum. For licensed spectrum, the company markets offerings for operations at 3.5 GHz, 10.5 GHz and 26 and 28 GHz.

Cisco: A comprehensive search of Cisco's Web site and other technical materials indicates that the company does not currently market a product for M-LMS applications at 902-928 MHz.

IP Wireless: IP Wireless does not presently provide equipment that could be used in M-LMS spectrum. For example, the company offers commercial products in the following bands: 1900 - 1920 MHz (IMT-2000 3G band); 2010 - 2025 MHz (IMT-2000 3G band); 2053 - 2082 MHz; 2500 - 2690 MHz (MMDS / ITFS band in US, IMT-2000 extension band internationally); and 3400 - 3600 MHz (international FWA

³ See In the Matter of Request of Warren C. Havens for Waiver of the Five-Year Construction Requirement for His Multilateration Location and Monitoring Service Economic Area Licenses, Memorandum Opinion and Order, released December 9, 2004 (*Havens Order*), at page 3.

⁴ See Petition for Rulemaking filed by Progeny, RM-10403 (filed March 5, 2002) at page 16 (*Progeny Petition*).

band). Products in development include 700 MHz (U.S.) and 2300-2400 MHz (China and Korea for TDD operations; U.S. for WCS operations and U.S. and Australia for MMDS).

Lucent: An extensive search of Lucent's online product listings indicated that no equipment that is presently marketed would be applicable to meeting Progeny's M-LMS build-out obligations.

Motorola: A complete search of Motorola's available product lines indicated that the company does not presently market products that would be suitable for deployment to meet the construction requirements of M-LMS licenses.

Nokia: Nokia does not currently market equipment that would be viable for meeting Progeny's construction obligations for its M-LMS licenses. The company, for example, offers TETRA network and related equipment for public safety networks, but does not provide configurations that would fall within the strict service restrictions and other operating requirements of the FCC's M-LMS rules.

Nortel: A survey of Nortel's online product listing did not turn up equipment that would be applicable to building out Progeny's licenses at 902-928 MHz.

TrangoBroadband Wireless: This firm offers a 900 MHz non-line-of-sight system for 900 MHz license-exempt spectrum to deliver up to 3 Mbps to end users. The company does not market offerings for licensed users in this band.

WaveRider: WaveRider makes non-line-of-sight 902-928 MHz broadband systems for license-exempt services, but not their licensed counterparts in the band.

In addition through agreements with consultant, Progeny has continued ongoing market research of applications for its M-LMS licenses, including those related to RFID. This research includes attendance at the FCC's October 7, 2004, RFID workshop and monitoring and assessments of RFID deployment in the commercial sector, including plans by Wal-Mart.